No. 16-1363

In The Supreme Court of the United States

KIRSTJEN M. NIELSEN,
Secretary of Homeland Security, et al.,

Petitioners,

v.

MONY PREAP, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

BRIEF OF *AMICI CURIAE* ADVANCEMENT PROJECT, ET AL. IN SUPPORT OF RESPONDENTS

ALINA DAS
Counsel of Record
JESSICA ROFÉ
WASHINGTON SQUARE
LEGAL SERVICES, INC.
245 Sullivan Street
5th Floor
New York, NY 10012
(212) 998-6430
alina.das@nyu.edu

Counsel for Amici Curiae

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

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STATEMENT OF INTEREST

Amici curiae are 62 community groups, immigrant rights organizations, law clinics, and legal service providers whose members and clients face the severe consequences of the Government's expansive application of mandatory immigration detention to individuals who have reintegrated into their communities following a past criminal conviction.[1] Despite the years during which our clients and members have demonstrated their lack of flight risk and dangerousness following a past conviction, the Government chooses to read the law to require their incarceration with no access to bond hearings. The Government thus bestows upon itself an enormous and terrifying power—to rip people away from their families and communities whenever immigration agents choose to initiate removal proceedings, with no review of evidence demonstrating the arbitrariness of their detention.

We have a profound interest in ensuring that the voices of our members and clients are included in the resolution of the legal issues in this case. Their stories demonstrate the real-life outcome of the Government's position: arbitrary detention that is neither required by law nor permitted by the Constitution.

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[1] *Amici* state that no counsel for a party authored any part of this brief, and no person or entity other than *amici* and their counsel made a monetary contribution to the preparation or submission of this brief. Both petitioners and respondents have consented to the filing of this brief pursuant to Rule 37.3(a).

The names of each organization are appended after the conclusion of this brief.

SUMMARY OF ARGUMENT

For our members and clients, the story often begins with a knock at the door. It is early, before the sun has risen. Bleary-eyed, pajama-clad, the occupant opens the door. Suddenly she is surrounded. People with guns enter. They search the house. Her children wake. The youngest begin to cry, to reach for her. Her husband attempts to hold the children back. The people with guns state they are from immigration. She stumbles through her things, attempts to show them her immigration paperwork. It does not matter. Handcuffs appear. Everyone is crying now. She is taken away. Days pass before her family finds out where she is. They withdraw every penny from the bank and come to immigration court, ready to beg for her release. Then they learn she cannot be bonded out.

In all of its forms, mandatory detention—incarceration without a bond hearing—is extreme. 8 U.S.C. § 1226(c) applies mandatory detention to immigrants who have been convicted of certain types of offenses "when the alien is released" from criminal custody for that offense. In *Demore v. Kim*, this Court observed that Congress enacted § 1226(c) in reaction to the growing number of immigrants in prison being released into the community, where immigration officials had struggled to "identify [them] . . . much less locate

them and remove them from the country." 538 U.S. 510, 518 (2003). No bond hearings were necessary because, in the view of Congress, an irrebuttable presumption of flight risk and dangerousness applied to immigrants in criminal custody for certain offenses.

As devastating as Congress's enactment of § 1226(c) was, the Executive Branch has stretched the law beyond recognition. Congress commanded federal immigration agents to identify certain removable immigrants in prison and ostensibly prevent flight risk and danger to the community through their continued immigration detention at the conclusion of criminal custody. Rather than follow that command, federal immigration agents now reach into communities to detain law-abiding individuals—months or years after the person's removable offense—and then claim no authority to consider the months, years, or even decades demonstrating the person's lack of flight risk or dangerousness.

The stories of our members and clients lay bare the absurdity of applying an irrebuttable presumption of flight risk and dangerousness to individuals already in the community following a criminal conviction. They are individuals who have been living in their communities peaceably for years following their removable offenses. Depriving them of bond hearings not only harms them, but destroys the lives and families they have built since their past conviction. Such an expansive view of mandatory detention entraps those most likely to make themselves available to immigration officials, as well as those most likely to win their immigration cases based on their years of equities.

Preserving our community members' and clients' access to bond hearings is not, as the Government suggests, a "windfall" or "reward." *See* Gov. Br. at 10, 11, 13, 21, 27, 28, & 40. It merely recognizes their liberty interests, and ensures that any deprivation of that liberty is based on the actual record rather than a false presumption.

ARGUMENT

I. Applying Mandatory Detention to Immigrants Who Have Returned to the Community Following A Past Conviction Leads to Arbitrary and Punitive Detention.

"I was just one week away from completing my master's degree in social work. I had meticulously planned every step toward obtaining it, ever since I had been incarcerated. That included working at various nonprofits, as both an intern and an employee, in addition to my schoolwork. . . . This would be the fulfillment of a promise I had made to myself about changing my legacy to reflect who I really was: a person who, despite having been incarcerated, had potential. But when the doorbell rang at 7 a.m., it was Immigration and Customs Enforcement waiting on the other side of the door.... By that night, I was at a jail in Kearny, New Jersey, all alone in a double-bunk cell with no idea of what was going to happen next.... I remember the calls with my daughters. My youngest was no more than three years

old, and every time she would get on the phone with me, she'd ask, 'Daddy, when are you coming home?'"

– Khalil Cumberbatch[2]

"I woke up. I heard knocking on the door. It was 7 o'clock in the morning. I peeked through the window and I see 'police' with vests. . . . He was like, do you recall 1997, a case? And I was like, yeah, I already did my probation . . . 15 years later they come knocking on the door, and they give me a piece of paper. . . . I was in detention for almost two years and six months fighting it. My daughter was four. We were getting prepared for her to go kindergarten. . . . [W]e were going to walk to school every day . . . It didn't turn out that way."

– Astrid Morataya[3]

"The Framers viewed freedom from unlawful restraint as a fundamental precept of liberty. . . ." *Boumediene v. Bush*, 553 U.S. 723, 739 (2008). That liberty "'denotes not merely freedom from bodily restraint but also the right of the individual . . . to engage in any of the common occupations of life, . . . to marry, establish a home and bring up children, . . . and generally to enjoy those privileges long recognized . . . as essential to the orderly pursuit of happiness by free

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[2] Khalil Cumberbatch, *The Day ICE Knocked on My Door*, The Marshall Project (Feb. 1, 2018), https://www.themarshallproject.org/2018/02/01/the-day-ice-knocked-on-my-door.

[3] *Why We Must Abolish a 1996 Law that Has Destroyed Thousands of Families* (VIDEO), https://www.immigrantjustice.org/staff/blog/why-we-must-abolish-1996-law-has-destroyed-thousands-families-video.

men.'" *Bd. of Regents of State Colls. v. Roth*, 408 U.S. 564, 572 (1972) (quoting *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)).

The lives that our members and clients have built during the months, years, and decades of liberty following a past conviction have meaning. Mandatory detention is offensive to liberty everywhere, but particularly so when applied to immigrants who have already returned to their communities. Our members and clients have reestablished their lives following their past convictions, disproving any presumption of flight risk and dangerousness that may have otherwise applied. Depriving them of their liberty without a bond hearing ignores the plain facts and creates unique, reverberating harms to immigrants, their families, and the immigration system as a whole.

The Government suggests that applying mandatory detention to our members and clients even after they have returned to the community fulfills Congressional intent. Gov. Br. at 22-25. But there is no indication that Congress sought the application of mandatory detention to individuals who have long been living productively in the community.

Congress enacted mandatory detention against a backdrop of reports and hearings regarding the growing number of immigrants in federal and state prisons.[4] As this Court observed in *Demore v. Kim*,

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[4] *See, e.g.*, S. Rep. No. 104-48, at 21 (1995) (seeking detention without bond for noncitizens who would otherwise be released from their "underlying sentences" before the agency could complete

Congress was concerned that incarcerated noncitizens were being released to the community where immigration officials had struggled to "identify [them] . . . much less locate them and remove them from the country." 538 U.S. 510, 518 (2003). Congress thus enacted mandatory detention to prevent the release of incarcerated immigrants upon the completion of their criminal sentences. Bond hearings were unnecessary because, in Congress's view, an immigrant in criminal custody could be irrebuttably presumed to be a flight risk or danger to the community.

Congress's choice to enact mandatory detention has been painful. Every day, we see the harm done by mandatory detention to immigrants who would otherwise be released after serving their time.

But as flawed as mandatory detention is on its own terms, there is simply no indication that Congress sought to apply this irrebuttable presumption to those who have already returned to the community and are later targeted by immigration officials for removal proceedings. Such individuals have, by definition, been identified and located by immigration officials in their communities. Such individuals have a record following the completion of their sentence by which to judge their flight risk or dangerousness.

As the stories of our clients and members show, ripping these individuals out of their communities and

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deportation proceedings); House Conf. Rep. 104-828, at 210-11 (1996) (seeking to mandate detention when noncitizens are "released from imprisonment" for a predicate offense).

denying them access to bond hearings based on years- or decade-old convictions results in arbitrary and punitive deprivations of liberty. Such outcomes go far beyond the terms of mandatory detention and lead to unique harms.

A. Applying mandatory detention to immigrants living in the community arbitrarily forces judges to ignore years of evidence of community ties and rehabilitation following a past conviction.

The Government points to no other context in which a past conviction carries with it an irrebuttable presumption of flight risk and dangerousness for someone living peaceably in the community. Our members and clients have accumulated months, years, and even decades of evidence eroding any presumption that may have attached to their long-ago convictions.

Khalil Cumberbatch[5] knows firsthand the unreasonableness of applying an irrebuttable presumption of flight risk and dangerousness to individuals who have old criminal records. Mr. Cumberbatch is the Associate Vice President of Policy at the Fortune

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[5] The facts of Mr. Cumberbatch's case are detailed in his article and others discussing his story. *See* Khalil Cumberbatch, *The Day ICE Knocked on My Door*, THE MARSHALL PROJECT (Feb. 1, 2018), https://www.themarshallproject.org/2018/02/01/the-day-ice-knocked-on-my-door; Benjamin Weiser, *Cuomo, Using Pardon Power, Gives Pair a 'Second Chance'*, N.Y. TIMES (Dec. 31, 2014), https://www.nytimes.com/2015/01/01/nyregion/cuomo-using-pardon-power-gives-pair-a-second-chance.html.

Society, a nationally recognized criminal justice reform organization whose mission is to support successful reentry from incarceration.

Mr. Cumberbatch intimately understands the value of reentry support. At the age of twenty, Mr. Cumberbatch and a friend were convicted of a robbery and sent to prison. Individuals Mr. Cumberbatch met in prison encouraged him to rethink his path, and Mr. Cumberbatch committed himself to rebuilding his life. He finished college, and enrolled in graduate school for social work. He began working at the Fortune Society, giving back to others similarly seeking to rebuild their lives following incarceration.

Four years after his release from prison—and just a week away from completing his master's degree—immigration agents knocked on his door. His daughters were sleeping in the other room as he and his wife spoke to the officers. They told him that, as a lawful permanent resident from Guyana, he was deportable based on his old conviction. Then they took him away.

Mr. Cumberbatch found himself across state lines in a county jail in New Jersey. He remained there for five months. He sought bond from the judge, but the judge concluded he was powerless to consider Mr. Cumberbatch's clean record since his conviction, his family ties, work, education, or community service. Although Mr. Cumberbatch counseled others every day about the power of second chances, he was detained as an irrebuttable flight risk and danger to the community.

After a groundswell of community pressure, immigration officials released Mr. Cumberbatch after five months of detention. In December 2014, Mr. Cumberbatch was granted a pardon by Governor Andrew Cuomo. He returned to his family, received his master's degree, and continues his work to support the reentry of people leaving prison. His detention was unnecessary and arbitrary, a reflection of the government's over-expansive reading of the mandatory detention statute.

Mr. Cumberbatch had four years of evidence demonstrating his lack of flight risk and dangerousness. Many other immigrants have even longer periods of evidence following a past criminal conviction that immigration officials have ignored. Consider the case of **Astrid Morataya**.[6] Immigration agents waited approximately *fifteen years* to commence removal proceedings against her based on old drug offenses.

Ms. Morataya had lived in the United States since she was eight years old, after fleeing violence in Guatemala. The mother of three U.S. citizen children, Ms. Morataya was placed in removal proceedings in 2013 based on her old drug convictions, which she received during a period in her life when she was the victim of ongoing sexual abuse. Ms. Morataya ultimately testified against her abuser in court, aiding in his successful prosecution. When she was placed in removal

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[6] The facts of Ms. Morataya's case are detailed in a declaration by her attorney. *See* Decl. of Claudia Valenzuela, Esq. of the National Immigrant Justice Center (on file with counsel).

proceedings years later, she was eligible for a "U visa",[7] a path to lawful permanent residence, based on her cooperation with law enforcement and an "inadmissibility waiver" due to her strong positive equities. She was ultimately granted this relief and remains in the U.S. with her family to this day.

Nonetheless, because Ms. Morataya was deemed an irrebuttable flight risk and danger based on her fifteen-year-old criminal record, she was forced to stay in detention for two-and-a-half years until her case was resolved. Held in county jails in Illinois and Wisconsin, she was twice placed in solitary confinement, once for having a sugar packet in her uniform that she forgot to dispose of at mealtime, and once for not being ready to leave her cell because she had begun menstruating and lagged behind her cellmates while trying to secure menstrual pads. All the while, she was needlessly separated from her family, never given the opportunity to seek a bond hearing.

Immigration arrests have skyrocketed over the past year, with a focus on "interior enforcement" against individuals living in the United States.[8] Untold numbers of immigrants are being plucked out of their communities today and placed in detention without bond hearings based on old convictions. **Jean**

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[7] *See* 8 U.S.C. § 1101(a)(15)(U); 8 C.F.R. § 214.14.

[8] U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, FISCAL YEAR 2017 ICE ENFORCEMENT AND REMOVAL OPERATIONS REPORT, https://www.ice.gov/sites/default/files/documents/Report/2017/iceEndOfYearFY2017.pdf (documenting rise in interior enforcement).

Harold Lithus[9] is one of those immigrants. A lawful permanent resident who came to the U.S. from Haiti twenty-five years ago, Mr. Lithus has two U.S. citizen children and has worked for the same company for eighteen years. This summer, Mr. Lithus was arrested in his home and taken to a county immigration jail in New Jersey. Mr. Lithus was denied a bond hearing because of a single drug possession conviction he received *twelve years* prior, for which he received time served. Because of that single conviction, Mr. Lithus continues to be held in detention, separated from his family, until the immigration court can adjudicate his application for cancellation of removal based on his significant family ties and work history in the U.S.

These stories are not outliers. According to available data from class action litigation in *Gordon v. Napolitano*, No. 3:13-cv-30146-MAP (D. Mass.), the majority of individuals deprived of a bond hearing had been detained over one year after their release from criminal custody, and nearly one in five were detained more than five years later.[10] Only a bond hearing will allow people's time at liberty following a criminal conviction to be considered.

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[9] The facts of Mr. Lithus's story are detailed in his habeas petition. *See Lithus v. Ortiz*, No. 2:18-cv-11520 (D.N.J. filed Jul. 7, 2018).

[10] Adriana Lafaille & Anant Saraswat, *Supreme Court Case Has Echoes in Massachusetts*, ACLU MASS. (Aug. 5, 2018), https://www.aclum.org/en/publications/supreme-court-case-has-echoes-massachusetts.

B. Applying mandatory detention to immigrants living in the community targets those who follow the law and make themselves available to immigration officials following a past conviction.

The irrebuttable presumption of flight risk and danger is rendered all the more absurd when one considers that many of the noncitizens affected by the Government's position in this case come to the attention of federal immigration authorities precisely because they affirmatively present themselves to immigration officials, either by submitting applications to the Department of Homeland Security, through travel and reentry at a port of entry, or otherwise complying with the law.

For example, **Y Viet Dang**[11] is a longtime lawful permanent resident from Vietnam who was detained without a bond hearing in 2010, when he applied for U.S. citizenship and came to immigration authorities to check the status of his application. He was detained and deprived of a bond hearing based on two decade-old convictions involving possession of a firearm and theft, for which he was eligible for relief from removal. In the ten years that had passed since his release from criminal custody, Mr. Dang had reintegrated into his community, working and raising his U.S. citizen child with his U.S. citizen wife, a U.S. Army lieutenant. At no time did he attempt to elude immigration authorities;

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[11] The facts of Mr. Dang's case are detailed in *Dang v. Lowe*, No. 1:CV-10-0446, 2010 U.S. Dist. LEXIS 49780 (M.D. Pa. May 7, 2010) (Report and Recommendation).

in fact, he repeatedly made himself available to immigration officials through his applications to renew his lawful permanent resident card and to become a U.S. citizen.

As a federal court noted when it granted a habeas petition in his case, Immigration and Customs Enforcement ("ICE") waited almost ten years with no explanation to take Mr. Dang into custody. The court noted that "it appears from the record that Petitioner Dang is very likely to appear for his removal proceedings based on the various other applications he has filed over the years with ICE and the fact that he appeared to have cooperated with ICE with respect to these applications." After winning his habeas petition, Mr. Dang was released on bond. Like many others affected by the Government's position in this case, no purpose was served by his mandatory detention.

Consider the story of **Jennifer Frank**, a lawful permanent resident from the United Kingdom who had lived in the United States for nearly fifty years at the time of her detention.[12] After experiencing domestic violence and homelessness, Ms. Frank developed a drug addiction and received non-violent convictions. After her release from jail in 2009, she successfully participated in a drug rehabilitation program and worked with a local reentry and mentorship program. Ms. Frank was able to support herself, find an apartment

[12] "Jennifer Frank" is a pseudonym to protect Ms. Frank's identity. The facts of her case are detailed in a declaration by her attorney. *See* Decl. of Alina Das, Esq. (on file with counsel).

to live in with her daughter, and receive medical treatment for serious injuries she sustained during her period of homelessness. She also gave back to the reentry and mentorship program that had assisted her.

It was at this time that Ms. Frank also applied to renew her permanent resident card. After that, nearly a year-and-a-half after her release from criminal custody, her life was disrupted when immigration officers came to her home, arrested her, and transferred her to a detention facility several hours from her home. As a result, Ms. Frank was separated from her daughter, who was evicted from their apartment, and she was unable to continue her work with her reentry program. She spent five months in detention in a county jail without a bond hearing. She filed a habeas petition seeking a bond hearing, and immigration officials released her. While she was able to rebuild her life following detention, both she and her family went through significant hardships while she was detained.

Mr. Dang and Ms. Frank are not alone, and the numbers of people who will be referred to immigration officials for mandatory detention will only increase if the Government is permitted to continue its expansive reading of the mandatory detention statute. U.S. Citizenship and Immigration Services has recently issued guidance directing it to continue and expand its practice of issuing Notices to Appear and referring cases to ICE for potential initiation of removal proceedings

against noncitizens who apply for immigration benefits.[13] Mandatory detention will therefore ensnare many more individuals with old convictions who come forward to apply for citizenship, the renewal of green cards, and other immigration benefits. Despite voluntarily submitting to background checks and working with immigration officials, these individuals will be irrebuttably deemed flight risks and dangers under the Government's expansive interpretation of the mandatory detention statute.

C. Applying mandatory detention to immigrants living in the community punishes those most likely to have developed the equities to win their immigration cases following a past conviction.

By sweeping up individuals who are released from criminal custody and successfully reintegrated into their communities into the mandatory detention scheme, the Government's interpretation denies bond hearings to individuals who are *most likely* to win their immigration cases due to the equities they developed following their conviction. Many of the most common forms of relief from removal require judges to consider a noncitizen's rehabilitation and the passage of time following a criminal record, including cancellation of removal and waivers under § 212(h) and former

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[13] Policy Memorandum 602-0050.1, Updated Guidance for the Referral of Cases and Issuances of Notices to Appear (NTAs) in Cases Involving Inadmissible and Deportable Aliens, https://www.uscis.gov/news/alerts/updated-guidance-implementation-notice-appear-policy-memorandum.

§ 212(c) of the Immigration and Nationality Act. *See, e.g.*, *Matter of C-V-T-*, 22 I&N Dec. 7, 11 (BIA 1998). Ignoring rehabilitation and the passage of time for purposes of mandatory detention is thus discordant with the rest of the removal system.

Take **Aba Dele**[14] as an example. Mrs. Dele was born in West Africa and experienced a difficult childhood. She was twice raped and struggled to find work to support herself financially. Afraid of the violence and instability of her life in West Africa, Mrs. Dele came to the United States on a visitor's visa. In 2006, her family began to struggle financially. Pregnant and facing eviction, Mrs. Dele took money from her employer to pay her rent, hoping she could repay the money with her next paycheck. Soon arrested, she was sentenced to probation and restitution, which she paid back in full. She rebuilt her life and became a home health aide for elderly individuals, paid income taxes, and was a prominent fixture in her church. She married a U.S. citizen and together they raise four children in addition to supporting other family members.

Eight years after her conviction, without any other incidents with the law, Mrs. Dele was dropping her youngest child off at his preschool when she was arrested and shackled by armed immigration agents. Mrs. Dele was detained in a county jail far from the city where she lived. Her four children were traumatized

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[14] "Aba Dele" is a pseudonym to protect Ms. Dele's privacy. The facts of Ms. Dele's case are detailed in a declaration by one of her attorneys. *See* Decl. of Alina Das, Esq. (on file with counsel).

by the sudden separation from their mother, and her husband struggled financially to support the family.

At the time she was placed in mandatory detention, Mrs. Dele was eligible for adjustment of status based on her marriage to a U.S. citizen and a waiver of her conviction—relief that she was given at the conclusion of her removal proceedings two years later. In granting the waiver, the judge considered her clean record and hard work since her single conviction. Yet, according to the Government, none of those factors warranted release from detention.

Fortunately, Mrs. Dele's case was within the Second Circuit, which recognized the right to bond hearings within six months of detention prior to this Court's recent decision in *Jennings v. Rodriguez*, 583 U.S. ___, 158 S. Ct. 830 (2018). Mrs. Dele was released on bond at six months, but by then much of the damage to her husband and children had already been done. Mrs. Dele should never have been detained without a bond hearing in the first place.

Like Mrs. Dele, **Santos Cid-Rodriguez**[15] is someone subjected to mandatory detention whose strong equities following a past conviction led to a grant of relief from removal. Mr. Cid-Rodriguez had been a lawful permanent resident for over 20 years at the time of his

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[15] The details of Mr. Cid-Rodriguez's case are described in his habeas petition. *Cid-Rodriguez v. Shanahan*, 14-cv-3274 (S.D.N.Y. filed May 6, 2014); *see also* NATIONAL IMMIGRATION LAW CENTER, BLAZING A TRAIL: THE FIGHT FOR THE RIGHT TO COUNSEL IN DETENTION AND BEYOND 37-38 (Mar. 2016), https://www.nilc.org/wp-content/uploads/2016/04/Right-to-Counsel-Blazing-a-Trail-2016-03.pdf.

detention. His wife is a permanent resident, and he is the father of four children, three permanent residents and one U.S. citizen. Prior to his detention, he lived with his wife and three of his children in New York, and worked managing a bodega and for cleaning and medical equipment companies.

In 2014, Mr. Cid-Rodriguez was suddenly awoken and arrested in his bedroom by immigration officers, who detained him without bond. Mr. Cid-Rodriguez was detained based on a fourteen-year-old misdemeanor conviction for simple drug possession, for which he received a conditional discharge and served no jail time.

During Mr. Cid-Rodriguez's immigration detention, his 22-year-old son had to support the entire family without him. Detention exacerbated Mr. Cid-Rodriguez's chronic back condition, which arose from an on-the-job fall several years before. Mr. Cid-Rodriguez sought release, but was not permitted to have a bond hearing. The immigration judge noted that he would ordinarily be inclined to set a bond for someone who is only removable on the basis of a years-old conviction, but believed he was constrained by Board of Immigration Appeals precedent.

After months of detention, the immigration judge granted Mr. Cid-Rodriguez's application for relief from removal. The government waived appeal, and Mr. Cid-Rodriguez was finally released. Mr. Cid-Rodriguez subsequently became a naturalized citizen. It was clear to all involved that Mr. Cid-Rodriguez deserved to be

back with his family. But the immigration judge could not consider those same equities when Mr. Cid-Rodriguez initially sought a bond hearing.

As evidenced by the stories above, the government's argument that Congress wanted to detain without bond "*all* aliens with the requisite criminal history"—no matter how long ago the conviction occurred, or how much evidence the individual has of positive equities, family and community ties, work history, and rehabilitation they have accumulated in the interim—makes little sense given the weight these factors are given in the immigration system as a whole. Immigrants like Mrs. Dele and Mr. Cid-Rodriguez—and the many others profiled in this brief who successfully secured relief from deportation—are among those least likely to flee or pose a danger to the community given the long passage of time since their past convictions.

D. Applying mandatory detention to immigrants living in the community abruptly destroys the lives and families they have built since their past conviction.

In addition to irrationally targeting immigrants least likely to be flight risks and dangers, mandatory detention of immigrants who have long been in the community carries with it significant costs, not only to

the detained immigrants, but also to their family members whose lives are abruptly torn apart.[16]

Nhan Phung Vu[17] understands well the devastation that mandatory detention can cause to one's loved ones. A lawful permanent resident from Vietnam who has lived in the United States since he was just four years old, Mr. Vu was arrested and detained by immigration agents in a county jail in Massachusetts more than *ten years* after his release from custody for his past conviction.

The impact of Mr. Vu's mandatory detention on his U.S. citizen family was grave. During his detention, his wife and children lost their health coverage, which had been provided by Mr. Vu's employer. His stepson, who was suffering from Hodgkin's lymphoma, stopped receiving vital follow-up treatments he needed to recover from cancer. His daughter was unable to attend physical therapy. Both of Mr. Vu's daughters were plagued by nightmares. And Mr. Vu's wife struggled to make mortgage payments without Mr. Vu's steady income.

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[16] Children with an incarcerated parent are more likely to experience hardship, residential instability, and family dissolution. When parents are detained without warning, "the sudden separation from their children can have potentially severe psychological impacts." *See* Randy Capps et al., Implications of Immigration Enforcement Activities for the Well-Being of Children in Immigrant Families (Sept. 2015), https://www.migrationpolicy.org/research/implications-immigration-enforcement-activities-well-being-children-immigrant-families.

[17] The facts of Mr. Vu's case are detailed in the filings in *Gordon v. Napolitano.*, No. 13-cv-30146-PBS (D. Mass.).

Mr. Vu ultimately won release from detention after filing a petition for a writ of habeas corpus. However, the damage to his family's physical, emotional and financial well-being had already been done. Had Mr. Vu been afforded a bond hearing at the outset of his removal proceedings, he could have defended his removal proceedings from home, with his wife and children, and continued providing for his family, instead of being needlessly separated from them.

And Mr. Vu and his family are not alone. When **Alexander Lora**[18] was abruptly detained by immigration agents, his U.S. citizen family also suffered. Mr. Lora, a lawful permanent resident from the Dominican Republic who has lived in the United States since he was seven years old, was detained and placed in removal proceedings in 2014, nearly four years after a 2010 drug conviction for which he was sentenced to probation with no jail time. Immigration agents grabbed Mr. Lora in the middle of the street, shackled him in public view, and then took him to a detention center in New Jersey. Detention forcibly separated Mr. Lora from his family in Brooklyn, leaving behind his U.S. citizen fiancée, his ailing mother for whom he provides care, and his two-year-old son.

The impact of this abrupt detention was immediate. After Mr. Lora was detained, his little boy was placed in foster care. Mr. Lora's fiancée was blocked from bringing Mr. Lora's son for visitation due to the

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[18] The facts of Mr. Lora's case are detailed in a declaration by his attorney. *See* Decl. of Talia Peleg, Esq. (on file with counsel).

jail's rules. Although Mr. Lora was eventually able to secure release through a habeas petition and ultimately won his removal case, he was still required to navigate the foster care system to regain custody of his son. This harsh outcome could have been avoided if Mr. Lora was afforded a bond hearing from the beginning.

Some of our clients and community members continue to struggle to pick up the pieces of their lives after being detained without bond years after an offense. **Sayed Omargharib**,[19] a lawful permanent resident for twenty-eight years, was a successful hairdresser in Washington, D.C. when he was arrested by immigration agents and detained for nearly two years due to a larceny conviction for having taken two pool cues following a dispute with an opponent in a local pool league. The Department of Homeland Security charged Mr. Omargharib with an "aggravated felony," charges that the U.S. Court of Appeals for the Fourth Circuit ultimately rejected two years later.

Although Mr. Omargharib was eventually vindicated, his abrupt mandatory detention did its damage. While detained, Mr. Omargharib lost both his home and his job. His credit was destroyed. He missed his son's high school graduation and the two became estranged. Now homeless, Mr. Omargharib is temporarily sleeping in a friend's basement in Virginia.

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[19] The facts of Mr. Omargharib's case are detailed in *Omargharib v. Holder*, 775 F.3d 192 (4th Cir. 2014). *See also* Decl. of Steffanie Lewis, Esq. (on file with counsel).

Mandatory detention of this kind also leads to particularly harsh consequences for vulnerable immigrants who would otherwise not be detained on account of their particular circumstances. **Cynthia Gonzalez** is one such example.[20]

Ms. Gonzalez had resided in the United States for over thirty years as a lawful permanent resident. After living in Florida for a number of years, Ms. Gonzalez moved to Tennessee to care for her sick and disabled father. Ms. Gonzalez became his primary caretaker. As his health began to improve, Ms. Gonzalez found fulltime work in a beauty supply store, was promoted to manager, and went back to college, earning a degree in 2012.

In 2014, as Ms. Gonzalez was leaving her house for work, ICE arrested her, alleging she was subject to removal based on convictions she received *thirteen years* prior for theft and forgery. Although she had only been sentenced to probation, ICE subjected her to detention without access to a bond hearing over a decade later.

In a matter of weeks, Ms. Gonzalez suffered humiliating treatment at three different facilities across the country. Ms. Gonzalez, who is a transgender woman, was denied her hormone medications—which she had been taking since 1999—and was subjected to solitary confinement and abusive conditions in immigration

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[20] "Cynthia Gonzalez" is a pseudonym to protect Ms. Gonzalez's privacy. The facts of Ms. Gonzalez's case are detailed in a declaration by her attorney. *See* Decl. of Caroline Barnes, Esq.; *see also* Decl. of Olga Tomchin, Esq. (both on file with counsel).

detention. During her lengthy transfers between facilities, she was placed in 5-point shackles. Within the facilities, guards hurled denigrating slurs at her, referring to her as "it" or "he-she."

During Ms. Gonzalez's detention, her family and friends were very worried about her declining mental health. Ms. Gonzalez's detention also negatively impacted her family financially. Her father did not have the resources to cover both the loss of her income and the costs of her legal defense.

Ms. Gonzalez eventually won her case and was released from detention, but she continues to suffer from its effects today. Diagnosed with acute Posttraumatic Stress Disorder, she required counseling for her trauma from detention. Had she not been subjected to mandatory detention in the first place, immigration officials could have made appropriate decisions about her release at the onset of her removal proceedings in light of the years that had passed since her last offense.

II. Bond Hearings Are Necessary to Protect the Liberty Interests of Immigrants Who Have Returned to the Community Following A Past Conviction.

"It was a complete nightmare. The hardest part was being away from my wife and daughter, who was two years old at the time. Watching my daughter behind a pane of glass, I still remember her crying that she

wanted me to hold her, she wanted me to play with her like I used to. But I couldn't."

– Arnold Giammarco[21]

"When my family came to visit me in detention, I wasn't allowed any physical contact, so I couldn't hold my newborn daughters or my son. I was at a breaking point, and nearly ready to sign deportation papers when . . . I finally received a bond hearing. . . ."

– Mark Hwang[22]

As explained in Point I, mandatory detention results in unique harms when applied to immigrants who are no longer in criminal custody. They develop months, years, and even decades of equities following their past criminal conviction. They raise families, go to school, start new jobs, and rebuild their lives. They stand to lose everything they have rebuilt following a conviction if immigration officials may detain them at any point in time without access to a bond hearing.

Rather than recognizing the liberty interests these individuals possess, the Government claims that providing them with a bond hearing would be a "windfall" or "reward." Gov't Br. at 10, 11, 13, 21, 27, 28, &

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[21] Arnold Giammarco, *After 50 Years as a Legal Immigrant, I Spent 18 Months in Immigration Detention Without a Bail Hearing*, PUB. RADIO INT'L'S THE WORLD (Nov. 30, 2016), https://www.pri.org/stories/2016-11-30/after-50-years-legal-immigrant-i-spent-18-months-immigration-detention-without.

[22] Mark Hwang, *How A Bond Hearing Saved Me From Deportation* (Oct. 3, 2017), https://www.aclu.org/blog/immigrants-rights/deportation-and-due-process/how-bond-hearing-saved-me-deportation.

40. In doing so, the Government misconstrues the role that bond hearings play in this context as a check on unnecessary detention. In addition, the Government trivializes the harms our community members and clients face when they are detained without access to bond. Bond hearings are not "windfalls" or "rewards"—they prevent arbitrary and punitive detention for people who have long been living freely in the community.

A. Bond hearings permit judges to assess flight risk and dangerousness based on the record immigrants have actually established in their communities following a past conviction, rather than a false presumption.

Bond hearings permit judges to make decisions about flight risk and dangerousness based on facts rather than false presumptions. Despite the Government's expansive application of mandatory detention, some of our members and clients have been given the opportunity to seek bond hearings due to federal court intervention. Their stories are powerful. They demonstrate that, when provided an opportunity to present the full record of their lives in the years after a conviction, immigrants frequently demonstrate to immigration judges that they merit release on bond.

Consider the case of **Mark Hwang**,[23] a lawful permanent resident who was detained and separated from his twin daughters just after their birth.

Mr. Hwang has been a lawful permanent resident of the U.S. for nearly thirty years, having immigrated to the U.S. from South Korea when he was nine years old. In 2013, shortly after the premature birth of his newborn twin daughters, Mr. Hwang was detained by immigration officials after a traffic stop. He was shocked to learn that a marijuana conviction he received fifteen years prior now would subject him to mandatory detention. Shackled and transported to Adelanto Detention Facility, Mr. Hwang was forced to leave his U.S. citizen wife Sarah alone to care for their newborns and two-year-old son. He attempted to vacate his marijuana conviction while detained, but he was unable to attend the hearing due to his detention.

After six months of detention, Mr. Hwang was given a bond hearing. He was detained within the Ninth Circuit, which recognized the right to bond hearings within six months of detention prior to this Court's recent decision in *Jennings v. Rodriguez*. Given Mr. Hwang's strong community ties and compelling reasons to stay and fight his deportation in court, the immigration judge ordered him released on bond in 2013. Once Mr. Hwang was released, he was finally able to pursue post-conviction relief and ultimately

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[23] The facts of Mr. Hwang's case are detailed in a declaration by his attorney. *See* Decl. of Stacy Tolchin, Esq. (on file with counsel).

had his marijuana conviction vacated. No longer deportable, his removal proceedings were terminated in August 2014, restoring his lawful permanent resident status. Without a bond hearing in which he established that he was neither a danger nor a flight risk, Mr. Hwang would have remained in detention where he would have been incapable of seeking vacatur of his conviction and may very well have been deported.

Permitting immigration judges to make bond decisions similarly saved **Erick Rogelio Nieto Baquera**[24] from unnecessary detention. A longtime resident of Colorado, Mr. Nieto first entered the U.S. in 1983 when he was only 11 months old and became a lawful permanent resident.

In 2013, Mr. Nieto was abruptly detained by immigration officials on the basis of a 2003 conviction he received for drug possession, for which he was sentenced to probation with no jail time. Mr. Nieto had a clean record over the past decade. He had cared for his family, worked two jobs, and began a moving and furniture delivery business. None of that could be considered, however, when he was detained, held in the GEO Detention Facility in Aurora, Colorado, where he remained for nearly six months. After Mr. Nieto filed a habeas petition, a federal district court ordered the government to provide him with a bond hearing.

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[24] The facts of Mr. Nieto's case are detailed in a declaration by his attorney. *See* Decl. of Katharine Speer, Esq. (on file with counsel); *see also Nieto Baquera v. Longshore*, No. 1:13-cv-00543-RM-MEH (D. Colo. filed Mar. 1, 2013).

When an immigration judge was finally able to consider Mr. Nieto's evidence at his bond hearing, he granted bond and Mr. Nieto was released back to his family. Nearly a year later, Mr. Nieto won his immigration case, and he subsequently became a U.S. citizen.

The power of bond hearings is also captured in the story of **Saul Marin**,[25] a resident of Washington. Mr. Marin came to the United States in 1988 and has lived here ever since. Over sixteen years ago, Mr. Marin received two convictions for simple drug possession.

Since that time, Mr. Marin rebuilt his life. He started a family and has four U.S. citizen children—two sets of twins, ages seven and nine. In addition to supporting his whole family financially and emotionally, he played a particularly important role in caring for one of his sons who has a learning disability and requires special education programming. While advocating for his son, Mr. Marin joined the board of the Early Childhood Education and Assistance Program in the district where his children were in school. Through this program, he worked closely with other parents and advocated for early childhood education in Olympia, Washington.

Despite the life that Mr. Marin built and the critical role he played for his family and for the community, Mr. Marin was arrested by immigration officers as

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[25] The facts of Mr. Marin's case are detailed in a declaration of his attorney. *See* Decl. of Robert Pauw, Esq. (on file with counsel); *see also Marin-Salazar v. Asher*, No. C13-96-MJP-BAT, 2013 WL 1499047 (W.D. Wash. Mar. 21, 2013).

he was leaving his home to go to work in September 2012. ICE went to his apartment complex to arrest another person, but then asked Mr. Marin about his immigration status, which Mr. Marin willingly disclosed. Taking him to the Northwest Detention Center, immigration officials refused to set bond on the basis of his drug possession convictions from over a decade prior.

Mr. Marin filed a habeas petition and the court ordered the Government to provide him with a bond hearing. Finally, he and his family were able to provide evidence of the last twelve years of his life and his contributions to his family and community. The immigration judge ordered his release on bond, and Mr. Marin was able to return to his family and his community. Although his case was ultimately resolved favorably, he should never have suffered those seven months of detention after twelve years of rebuilding his life.

When immigration judges are able to exercise their discretion to grant bond if the circumstances warrant it, they fulfill a key judicial function of ensuring that individual liberty is not unduly restrained in the absence of a legitimate government justification. As the stories above illustrate, many immigrants in detention would prevail at a bond hearing—if they were granted one.

This is demonstrated by the available data. In two separate class action lawsuits brought by immigrants subjected to mandatory detention after their release from criminal custody, judges who were given an opportunity to assess the merits of class members' bond

applications found that the immigrant detainee plaintiffs deserved release on bond the majority of the time.[26]

These figures reflect the distressing reality that mandatory detention, irrespective of how much time has elapsed since an immigrant's conviction, routinely ensnares those noncitizens who have the strongest grounds for fighting their deportation and, correspondingly, the most compelling reasons to do so. The figures also demonstrate that a bond hearing, however, is not a guarantee of release. The *Gordon* data, which disaggregated outcomes by the gap in custody, demonstrates that immigration judges are able to account for differences in the passage of time through their bond decisions. Based on the available data, 68% of individuals with a gap of more than five years since their release from criminal custody were granted bond, as compared to only 35% of those with a gap of 90 days or less.[27]

Thus, rather than merely rubber-stamping bond applications, immigration judges with bond authority can carefully consider the facts and circumstances of each individual's case, assessing whether a person's community ties warrant release on bond. By doing so, they can prevent unnecessary detention.

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[26] *See* Lafaille & Saraswat, *supra* note 11 (reporting that 51% of the hearings ordered through *Gordon* and 86% of the hearings ordered through *Khoury v. Asher*, 3 F. Supp. 3d 877 (W.D. Wash. 2014), *aff'd* 667 F. App'x 966 (9th Cir. 2016), resulted in the grant of bond).

[27] *Id.*

B. Bond hearings prevent immigrants living in the community from suffering arbitrary and punitive detention.

Bond hearings are also critical in ensuring that immigrants who are not flight risks or dangers do not suffer arbitrary and punitive detention. This is made all the more clear by the conditions in which immigrants are held.

Although immigration detention is considered "civil" in nature, the facilities that incarcerate immigrants operate on a penal model. Federal immigration officials incarcerate immigrants in a patchwork of more than 1,000 jails, prisons, and other facilities across the country.[28] Private prison corporations and county correctional departments operate 90% of these facilities, often in remote locations in the country.[29] Oversight is ineffective.[30]

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[28] NATIONAL IMMIGRANT JUSTICE PROJECT, ICE RELEASED ITS MOST COMPREHENSIVE IMMIGRATION DETENTION DATA YET. IT'S ALARMING, https://immigrantjustice.org/staff/blog/ice-released-its-most-comprehensive-immigration-detention-data-yet (analyzing U.S. Immigration and Customs Enforcement data from FY 2018).

[29] *Id.*; *see also* U.S. DEP'T OF HOMELAND SEC., HOMELAND SEC. ADVISORY COUNCIL, REPORT OF THE SUBCOMMITTEE ON PRIVATIZED IMMIGRATION DETENTION FACILITIES 6 (2016), https://www.dhs.gov/sites/default/files/publications/DHS%20HSAC%20PIDF%20Final%20Report.pdf

[30] U.S. DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GENERAL, ICE'S INSPECTIONS AND MONITORING OF DETENTION FACILITIES DO NOT LEAD TO SUSTAINED COMPLIANCE OR SYSTEMIC IMPROVEMENTS (Jun. 26, 2018), https://www.oig.dhs.gov/sites/default/files/assets/2018-06/OIG-18-67-Jun18.pdf; DETENTION WATCH NETWORK, ET AL., ICE LIES: PUBLIC DECEPTION, PRIVATE PROFIT (Feb.

Inside these facilities, immigrants are prisoners. Guards with guns "process" immigrants into these facilities by taking their clothing and belongings and replacing them with a prison jumpsuit.[31] Immigrants are henceforth referred to by an "Alien Number" rather than name, subject to the rules of the facility.

These rules restrict immigrants' liberty in all the ways that free people often take for granted. Access to food, sleep, fresh air, and skylight (if any) is all restricted.[32] Some facilities only permit visitation with family and friends through video.[33] Others permit visitation but only through plexiglass.[34] Some facilities

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2018), http://immigrantjustice.org/sites/default/files/content-type/research-item/documents/2018-02/IceLies_DWN_NIJC_Feb2018.pdf; U.S. DEP'T OF HOMELAND SEC., OFFICE OF THE INSPECTOR GENERAL, CONCERNS ABOUT ICE DETAINEE TREATMENT AND CARE AT DETENTION FACILITIES (Dec. 11, 2017), https://www.oig.dhs.gov/sites/default/files/assets/2017-12/OIG-18-32-Dec17.pdf.

[31] *See, e.g.*, HUMAN RIGHTS FIRST, JAILS AND JUMPSUITS: TRANSFORMING THE U.S. IMMIGRATION DETENTION SYSTEM–A TWO-YEAR REVIEW (2011), http://www.humanrightsfirst.org/wp-content/uploads/pdf/HRF-Jails-and-Jumpsuits-report.pdf; AMNESTY INTERNATIONAL, JAILED WITHOUT JUSTICE: IMMIGRATION DETENTION IN THE USA (2009), http://www.amnestyusa.org/pdfs/JailedWithoutJustice.pdf.

[32] *See, e.g.*, DETENTION WATCH NETWORK, EXECUTIVE SUMMARY: EXPOSE AND CLOSE 3 (2012), http://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Executive%20Summary.pdf.

[33] *See, e.g.*, DETENTION WATCH NETWORK, EXPOSE AND CLOSE: BAKER COUNTY JAIL, FLORIDA (Nov. 2012), https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Baker%20County.pdf.

[34] *See, e.g.*, DETENTION WATCH NETWORK, EXPOSE AND CLOSE: STEWART DETENTION CENTER, GEORGIA (Nov. 2012), https://www.

permit "contact visits"—visits where immigrants may see their visitors without a physical barrier—but then subject immigrants who participate in contact visits to strip searches.[35]

Isolated from their families, many immigrants in detention are also subject to forced labor, often at no pay or for a mere $1 per day.[36] Recent federal lawsuits, for example, against GEO Group and CoreCivic (formerly Corrections Corporation of America), allege the forced labor of thousands of immigrants imprisoned in their facilities in Colorado (where **Erick Nieto**, whose story is mentioned above, was held) and Georgia respectively.[37] The money that immigrants make, if any, goes back into the pockets of private prison corporations that charge exorbitant fees for commissary items and phone calls to loved ones.[38]

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detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Stewart.pdf.

[35] *See, e.g.*, DETENTION WATCH NETWORK, EXPOSE AND CLOSE: HUDSON COUNTY JAIL, NEW JERSEY (Nov. 2012), https://www.detentionwatchnetwork.org/sites/default/files/reports/DWN%20Expose%20and%20Close%20Hudson%20County.pdf.

[36] Ian Urbina, *Using Jailed Migrants as a Pool of Cheap Labor*, N.Y. TIMES (May 24, 2014), https://www.nytimes.com/2014/05/25/us/using-jailed-migrants-as-a-pool-of-cheap-labor.html.

[37] Kieran Nicholson, *Immigrants can sue federal detention center in Colorado over forced labor, appeals court says*, DENVER POST (Feb. 8, 2018), https://www.denverpost.com/2018/02/09/geo-group-aurora-immigration-detention-center-lawsuit/; Esther Yu His Lee, New lawsuit finds detained immigrants are forced to work for $1 a day, ThinkProgress (Apr. 17, 2018), https://thinkprogress.org/stewart-immigrant-forced-labor-9e3c73a88932/.

[38] Lee, *supra* note 37.

Immigrants who step out of line with facility rules are subject to additional punishment, including solitary confinement, as **Astrid Morataya**'s story illustrates above.[39] According to one investigation, on any given day, approximately 300 immigrants are held in solitary confinement at the 50 largest immigration detention facilities.[40] Half were isolated for over two weeks; 1 in 9 was isolated for over two months.[41]

Far too many immigrants in detention are also vulnerable to physical, emotional, and sexual abuse, as **Cynthia Gonzalez**'s story illustrates above.[42] A recent study documented 800 reports of abuse motivated by hate or bias in 34 detention facilities since January

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[39] NATIONAL IMMIGRANT JUSTICE CENTER & PHYSICIANS FOR HUMAN RIGHTS, INVISIBLE IN ISOLATION: THE USE OF SEGREGATION AND SOLITARY CONFINEMENT IN IMMIGRATION DETENTION 17-20 (2012), http://static.prisonpolicy.org/scans/Invisible.pdf; PHYSICIANS FOR HUMAN RIGHTS, BURIED ALIVE: SOLITARY CONFINEMENT IN THE U.S. DETENTION SYSTEM 11-14 (2013), https://s3.amazonaws.com/PHR_Reports/Solitary-Confinement-April-2013-full.pdf.

[40] Ian Urbina & Catherine Rentz, *Immigrants Held in Solitary Cells, Often for Weeks*, N.Y. TIMES (Mar. 23, 2013), http://www.nytimes.com/2013/03/24/us/immigrants-held-in-solitary-cells-often-for-weeks.html.

[41] *Id.*

[42] *See, e.g.*, SOUTHERN POVERTY LAW CENTER ET AL., SHADOW PRISONS: IMMIGRANT DETENTION IN THE SOUTH 14-16 (2016), https://www.splcenter.org/sites/default/files/ijp_shadow_prisons_immigrant_detention_report.pdf; NATIONAL PRISON RAPE ELIMINATION COMMISSION, NATIONAL PRISON RAPE ELIMINATION COMMISSION REPORT 21-23 (2009), https://www.ncjrs.gov/pdffiles1/226680.pdf; HUMAN RIGHTS WATCH, DETAINED AND AT RISK: SEXUAL ABUSE AND HARASSMENT IN UNITED STATES IMMIGRATION DETENTION 8-14 (2010), https://www.hrw.org/sites/default/files/reports/us0810webwcover.pdf.

20, 2017.[43] Immigration and Customs Enforcement itself received 237 reports of sexual abuse or assault in immigration detention facilities in FY 2017 alone.[44]

The health of immigrants often deteriorates while in detention, yet immigrants are subject to substandard medical care.[45] Since 2003, there have been over 180 reported deaths in immigration detention.[46] A study of recent detention deaths concluded that half were due to inadequate medical care.[47]

In light of the severe deprivation of liberty that detention imposes, a bond hearing cannot be fairly characterized as a "windfall" or "reward" to an immigrant who would otherwise be at liberty. When an immigrant is detained without a bond hearing, no one reviews

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[43] FREEDOM FOR IMMIGRANTS, PERSECUTED IN U.S. IMMIGRATION DETENTION: A NATIONAL REPORT ON ABUSE MOTIVATED BY HATE (Jun. 25, 2018), https://www.freedomforimmigrants.org/report-on-hate.

[44] *ICE Sexual Abuse Statistics*, THE INTERCEPT (Apr. 11, 2018), https://theintercept.com/document/2018/04/11/ice-sexual-abuse-statistics/.

[45] *See, e.g.*, HUMAN RIGHTS WATCH, ET AL., CODE RED: THE FATAL CONSEQUENCES OF DANGEROUSLY SUBSTANDARD MEDICAL CARE IN IMMIGRATION DETENTION (2018), https://www.hrw.org/sites/default/files/report_pdf/us0618_immigration_web2.pdf.

[46] DETENTION WATCH NETWORK, REPORTED SUICIDE AT GEORGIA IMMIGRATION DETENTION CENTER (Jul. 12, 2018), https://www.detentionwatchnetwork.org/pressroom/releases/2018/reported-suicide-georgia-immigration-detention-center.

[47] CODE RED, *supra* note 45; Meera Senthilingam, *Half of recent immigrant detainee deaths due to inadequate medical care, report finds*, CNN (Jun. 20, 2018), https://www.cnn.com/2018/06/20/health/immigrant-detainee-deaths-medical-care-bn/index.html.

whether the immigrant's detention—in horrific conditions, separated from family and friends, restricted in every way—serves a non-punitive purpose.

Consider the story of **Arnold Giammarco**.[48] An honorably discharged veteran of the U.S. Army and Connecticut National Guard, Mr. Giammarco lived in the United States for fifty years before federal immigration agents decided to detain him without access to a bond hearing. Although Mr. Giammarco had applied for citizenship when he was serving in the military, no action had been taken on his application. After he left military service, he suffered emotional difficulties leading to drug addiction and ended up with criminal convictions for drug possession and petty theft. But he managed to turn his life around. He overcame addiction and found work, earning several promotions to become a nighttime production manager at McDonald's. He and his partner Sharon married and focused their life on raising their little girl.

In 2011, seven years after Mr. Giammarco's last conviction, federal immigration agents came to his home, ordered him to lie face down on the ground, handcuffed him and took him away from his family. He

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[48] The facts of Mr. Giammarco's story are detailed in Complaint, *Giammarco v. Beers*, No. 3:13-cv-01670-VLB (D. Conn. Nov. 12, 2013), https://www.law.yale.edu/system/files/documents/pdf/Clinics/vlsc_giammarco_complaint.pdf. *See also* Decl. of Sharon Giammarco (on file with counsel); *U.S. Army Veteran Returns Home After YLS Clinics Secure Settlement* (Jul. 27, 2017), https://law.yale.edu/yls-today/news/us-army-veteran-returns-home-after-yls-clinics-secure-settlement.

was required to wear a prison uniform, and was shackled during his appearances in court. Held without access to a bond hearing, Mr. Giammarco watched helplessly as his family liquidated their savings fighting his case. In detention, he suffered daily indignities, the worst of which was being physically separated from his family by plexiglass during visitation. Unable to hold his two-year-old daughter, Mr. Giammarco agreed to his own deportation.

In 2017, a federal court recognized that Mr. Giammarco's citizenship application had been valid, and he was finally able to return home to the United States as a U.S. citizen. In the end, his mandatory immigration detention had served no purpose other than to punish Mr. Giammarco, a second time, for old convictions, and separate him from his American family.

CONCLUSION

The stories of the community members and clients described in this brief demonstrate the harsh consequences of denying bond hearings to individuals who have lived peaceably in our communities for months and years following a past criminal conviction. Such horrific outcomes are neither required nor permitted

by law. *Amici* respectfully urge this Court to uphold the decision of the Ninth Circuit in this case.

Respectfully submitted,

ALINA DAS
Counsel of Record
JESSICA ROFÉ
WASHINGTON SQUARE
LEGAL SERVICES, INC.
245 Sullivan Street
5th Floor
New York, NY 10012
(212) 998-6430
alina.das@nyu.edu

Counsel for Amici Curiae

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